

analysis

FRANK CHODOROV EDITOR

Vol. VI. No. 8

To be ignorant of one's own ignorance is the malady of the ignorant.—BRONSON ALCOTT.

JUNE 1950

Imperium in Imperio

THE Constitution that came out of the Philadelphia convention in 1787 was not acclaimed a "divine document." On the contrary, the folks were rather skeptical about it and made ratification difficult. Yet there was no organized opposition. The Constitution simply ran head on into the individualism that had defied the arrogance of British Toryism. The backcountry, which started at the outskirts of the few seaboard cities, was as suspicious of a national government as it had been hostile to foreign intervention. It was this spirit of self-reliance, of wanting to be let alone, that the ratifiers had to face and to which they addressed their argument in *The Federalist*.

Since the doctrine of States' Rights is rooted in this early opposition to the Constitution, any effort to revive it should take into account the psychological barrier that confronted Madison and Hamilton. States' Rights and individualism are historically related. It would seem to be good strategy, therefore, for a modern decentralization movement to plot its course by the same star. True, it is impossible to reconstruct the environment in which the individualism of early America was tempered; there is no haven of free land around. But the urge to be oneself, to work out one's destiny without let or hindrance, is not a matter of environment; it is inherent in the human make-up. Even the socialist, for all his talk of immolation for the good of a mass, betrays by his very rebellion the altogether human urge for self-expression through free choice. We all have it in varying degrees; none is ever rid of it. The necessity of existence may impel us to make adjustment to conditions, but the ego thus put under restraint is not destroyed. The indestructibility of the ego is certified by the revolutionary movements that characterize the history of man. A States' Rights movement is in essence a revolution, an opposition to the urgency of political power to limit choice and compel adjustment to its will and must rest its case on this fact. It is a certainty that any attempt to cut down the power of the central government is a fatuous gesture unless there is some feeling for freedom in the country.

At any rate, Hamilton and Madison and Jay were faced with the latent fear of political interference that was strong in the American of their day. It is for that reason that the logic of *The Federalist* is underlined with a note of supplication. In view of the high place the Constitution has attained in the hierarchy of American values, this pleading for its ratification is suggestive. Why was it necessary? For answer, we might recall what John Adams, writing in 1818, said about the revolution. It was effected, he declared, "before the war commenced. The revolution was in the hearts and minds of the people." It was exactly what was in the hearts and minds of the people, their character, that constituted the opposition to nationalism

in 1787 and explains why the Constitution put so many restrictions on the powers of the proposed government, not the least of which was the sharing of sovereignty with the state governments on a basis of equality. It could not have got by otherwise.

The Backbone of States' Rights

ABOVE all things these Americans cherished freedom. They had come to it by way of hardship and it stuck to their ribs. Many of them were but a generation away from indentured servitude; still quite alive was the memory of the horrors of migration; they had paid a high price for freedom. No government had given them their prized possession; they had literally hewn it out of the forest and they meant to keep it. All their experience with government, in the Europe from which they fled or in the colonies, taught them to distrust political power. Perhaps some government had its place in the scheme of life and might be tolerated—say, for organized opposition to the Indians or for the building of roads, and such things—but on the whole, the less of government the better. At best, it could never provide freedom, for that was something you got by your own effort; at worst, it could and would rob you of your freedom and therefore needed constant watching.

But how can one watch a government that operates from some distant seat, completely out of reach and behind a bulwark of laws of its own making? One has chores to do. The agrarian individualist was not taking chances. A government of neighbors, amenable to the will of neighbors, he would countenance and support, but he was intuitively opposed to a national establishment. The authors of the Constitution were thus put under the necessity of convincing him—and he was the unorganized majority—that the proposed government would in no way deprive him of the freedom he enjoyed under his home-made establishment, and for the little it would ask of him, in the way of taxes, it would provide him with services the local government could not furnish.

That is a distinguishing feature of *The Federalist*, a party platform replete with

promises of what the party would not do. It is strange reading, when compared to modern political pledges, in its negative assurances. The delegates to the Philadelphia convention were sent there by the state governments with instructions to fix up some defects in the Articles of Confederation, for the Congress operating under that charter was not functioning satisfactorily; the general economy was laboring under the handicap of interstate tariffs, lack of a uniform money, difficulty in enforcing contractual obligations. These deficiencies were blocking trade, and trade was the great concern of the new country. But, when the delegates came up with a brand new Constitution, declaring that a mere overhauling of the Articles was impractical, suspicion was aroused. It was therefore incumbent on the framers of this Constitution to prove its harmlessness, as far as individual freedom was concerned. The new government would do what the states separately could not do and no more. Only when a state could not maintain order and called upon the government for help would it take part in local matters. In fact, the federal government would be little more than the foreign department for the state governments.

In paper number forty-five Madison writes: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation and foreign commerce; with which last part the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties and properties of the people, and the internal order, improvement and prosperity of the State."

"The operations of the federal government will be most extensive in times of war and danger; those of the State governments in times of peace and security. As the former periods will probably bear a small proportion to the latter, the State governments will here enjoy another advantage over the federal government . . ." And so *The Federalist* goes on; promise after promise that the local governments shall remain immune.

Dualism and Individualism

THUS came the doctrine of States' Rights. It came as a concession to the dominant individualism of the times, to the spirit of freedom that was in the people. Perhaps with some of the delegates it was a considered theory of government; there is reason to believe that most of them would as soon have left it out of the Constitution. Hamilton, at any rate, would most certainly have preferred a national rather than a federal government, with undivided sovereignty, but the genius of the American people was decidedly against him. The Constitution was, after all, only

President Truman is reported to have commented to a group for whom he had been performing on the piano that perhaps the country would have been better off if he had prepared himself for the concert stage. The wise-crack is wiser than he surmised. This is no praise for his musical virtuosity, no reflection on his political sagacity. As a pianist he might have rendered a service to society, as a politician he can only do it harm. That is something man has yet to learn—that there is no social good in politics or politicians.

a political instrument, and as such had to confine its moralities to a preamble; in its working parts it had to conciliate divergent interests. The individualist was too important an interest to be ignored; he had to be appeased, and dual government was the price he demanded.

The doctrine of dualism came up for discussion many times between ratification and the Civil War. Almost always the debates were legalistic. On this ground, the nullifiers and the secessionists had the best of it, for nothing could be more certain than that the Union was conceived as a voluntary association of the thirteen states and that the states had existed as political entities for nearly a hundred and fifty years before the Constitution was thought of. Nor was there any question, as John C. Calhoun constantly insisted, that the Union was an organization of states, not of citizens; a Virginian was a Virginian before he was an American, and that was written into the Constitution as a condition of ratification.

But the debates were singularly free of the ideological background of the doctrine. States' Rights was invoked in support of sectional and economic interests rather than to protect the immunities of the individual from federal encroachment. In 1814 the New England manufacturers brought it up; before the Civil War the South made much of nullification and secession because of its tariff disabilities. If the present embryonic movement to restore some measure of local autonomy is to achieve any success, it must go back to beginnings; it must make its appeal to the unquenchable yearning for freedom; it must convince the American that his best chance for a good and freer life is under the aegis of a government of neighbors.

The Theory of Government

IT has always been the boast of States' Rights that they were the true Constitutionalists, that they adhered to the letter as well as to the spirit of the original document. The evidence supports the claim. To be consistent, the current crop of fundamentalists might look to the basic theory of government written into the Constitution. This theory, borrowed from John Locke, holds that the only purpose of government, and its only competence, is to protect private property. If it presumes to go beyond that function it is guilty of misfeasance; if it fails to perform that function it is derelict in its duty. "The first object of government," says Madison in the tenth number of *The Federalist*, is the protection of "the diversity in the faculties of men, from which the rights of private property originate." From that theory, despite their willingness to make compromises, the Founding Fathers never deviated.

From the standpoint of this theory of government, the Constitution has not only been violated, it has been destroyed. What exists now is only a faulty facsimile of the original document. The process of mutilation began a long time ago, in the Jackson Administration, when political gangsterism announced that "to the victors belong the spoils." But not until the Sixteenth Amendment was incorporated into the Constitution was its character completely altered. The income tax insinuated a theory of government quite unknown to the Founding Fathers, holding that the function of government is to act as *pater familias* to society as a whole. To perform that role, the government must have access to all that is produced, as a matter of right, just as a feudal baron might lay

claim to the fruits of his vassals' labor. This, of course, is a complete rejection of the right of private property; what the citizen may retain from his earnings is a concession, revocable at will. The citizen thus becomes a subject. For Constitutional support, this theory of government takes recourse in the ambiguous "general welfare" clause.

The "general welfare" clause meant different things to different members of the Constitutional Convention; according to Madison it was the subject of much bitter debate. But of one thing we can be sure,

If you get a notice of renewal please take care of it immediately; mail service is bad enough as it is. By the way, Postmaster General Donaldson reports that among the costs contributing to his troublesome deficit is an item of \$149 million for carrying government propaganda free. If that item were cut out, he could restore the mail service to its previous inefficiency, and our waste paper baskets would be less burdened—to say nothing of the saving in taxes.

and that is that it meant nothing like the New Deal interpretation to any of them. It could not have justified in their minds the investment of tax-money in government ventures competing with private industry, or the regulating and restricting of enterprise even to the extent of stifling it; and a system of doles was simply unthinkable. For, the economic thinking of the day was singularly *laissez faire*, and the idea of government intervention in one's way of making a living was abhorrent to these recent revolutionists. In the context of their economic philosophy the general welfare was promoted only by production. The wealth of the nation is the sum total of the wealth of the citizens; the government might extract from it but could not contribute anything to it. To them the only thing the government could do to promote the general welfare, in the economic field, was to provide protection "for the diversity in the faculties of men, from which the rights of property originate." Having done that it should get out of the way.

The Business of Politics

IF, as Charles A. Beard has so clearly shown, the Constitution was an "economic instrument," if "every fundamental appeal in it is to some material and substantial interest," does that invalidate its basic theory of government? To be sure, the Founding Fathers made concessions to the slave trade, the landed gentry, the money speculators and the protection-seeking industrialists. In so doing they simply accepted what the *mores* sanctioned. The business of the politician is not to improve upon the intelligence and conscience of his times, but rather to take what he finds and write and enforce the rules of the game accordingly. Whenever he tries to make men better than they are, or their understanding permits them to be, he is assuming a capacity he does not have and is courting trouble. The Founding Fathers made concessions to pressure-groups, to be sure; but when did politicians do otherwise? Can they do anything else? Even where the politician presumably abolishes all special privilege, as in totalitarian regimes, he simply makes of himself the sole beneficiary of all special privilege. The moralist's passion for a society free of special privilege will be satisfied, if it ever is,

by some mutation in the nature or intelligence of man; it will never come by way of politics.

It is beside the point to criticize the Founding Fathers for failure to distinguish between property got by one's own labor and property got by privilege. The distinction was quite unknown then and, except in the ivory tower of moral philosophy, is quite unknown now. The Constitution concerned itself with the principle of private property, not with a definition of it, and our present concern should be with that principle. Is the individual in better case under a regime that guarantees security of possession and enjoyment, or does he prosper better under a regime that confiscates all production and doles it out according to a formula of its own design? Putting aside the iniquities that grow up under the institution of private property, or the perversion of it, is it not, nevertheless, more conducive to the general welfare than State Capitalism? A States' Rights movement must face that question squarely.

Origin of Private Property

THE answer to that question must be sought in first principles. Why does a man produce? Obviously, to satisfy his desires, and desires are personal, not collective. If he is deprived of the fruits of his labors, by marauders or the government, the profit in laboring is gone, and if the defalcations persist he loses interest in production. The need of living impels him to produce what he can consume immediately, but the uncertainty of possession dissuades him from accumulating; he does not save, he does not put by any capital. Under compulsion, as in slavery or a totalitarian regime, he will exert himself to produce more than he consumes only because of the desire to avoid pain, but his output will be in proportion to the constancy of surveillance and the certainty of punishment. The slave is a poor producer simply because he has no interest in production.

On the other hand, if possession and enjoyment is secure, the urge to produce knows no bounds. For the desires of man are without limit. His first need is food, but with a plenitude of that commodity on hand, or easily obtainable, he conjures up from his imagination a desire for tablecloth, napkin, and, at long last, music with his meals. The humble hut that was the pioneer's castle is replaced with a mansion ablaze with electric light and equipped with hot-and-cold running water only because he has been able, under private property, to accumulate a superfluity of wealth. The progress of civilization, the advancement in the sciences and arts, is in proportion to the degree of private property permitted in the going *modus vivendi*, and retrogression follows from the discouragement of production where confiscation is the general practice. A society of thieves cannot prosper.

The principle of private property, then, stems from the composition of the human being. And the general welfare, or the aggregate of production, is promoted only by the certainty of possession and enjoyment. That is the underlying thought of the *laissez faire* philosophy which, at the time the Constitution was framed, was accepted as axiomatic.

It was, indeed, a mass attack on private property that spurred the Founding Fathers in their work and furnished them with ammunition in their fight for ratification. In Massachusetts, a mob of farmers, burdened with mortgages and vassal-

tion, had attention to law they could risk. Whet were justifiably to the principle which even the have been in retain possession ever, the danger others on their Constitution pre ed, would prevent hold of the rein ecuting a policy tem of checks as a bulwark of States' Rights.

UNDER these to keep the and off-balance, century and a half fairly safe and multiplied; the g But the spirit of ever encouraged a ing politicians. B interpretations a the checks and ba

STANDARD textbook finance declare that debt is quite unlike a because:

"We owe it to ourselves. To comprehend this we have only to fix in our identity of 'we' and 'our' cause 'we'—the lender's way distinguishable from —the borrowing govern transaction involves not entities, but two phases entity. It is as if your pants pocket extended to left-hand pants pocket: a whole neither loses nor

This explanation may if you haven't studied public at a famous university, have been away too long textbook; and it will make at all when you are making income tax return. But it is so well explained, ivy-covered walls those you are not an indolent wheeler person, you are a rule of society and have no outside its context. Time people believed in the my arate identity, and society upon as a voluntary association free men. But when the free will was exposed, the fiction of a duty to owed some sort of allegiance the medium of a response science, the myth of individualism dissolved into the

Hold on to the idea of a separate existence for a man will never understand 'we' ourselves," or for that matter concept of up-to-date reality you do not grasp this philosophy. Well then, society, an agglomeration of individuals, is the only reality. Agglomeration would not resistant a startling conclusion. This directing consciousness in a managerial committee of minds, which we call government. Not only is government the best of the society it manages, but by virtue of its education as persons are, it is estimable from society. Such government are not in a position, like those, to

